

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**SEARS, ROEBUCK & CO.<sup>1</sup>**

**Employer**

**and**

**Case No. 29-RC-10296**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 30, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Henry Powell, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that Sears, Roebuck and Co., herein called the Employer, Sears or the company, is a domestic corporation, with an office and branch facility located at 4701 Glenwood Road, Brooklyn, New York, where it has been engaged in the service of home appliances and the sale of parts related thereto. During the past twelve-month period, which period is representative of its operations in general, the

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

Employer, in the course and conduct of its business operations, purchased and received at various New York State locations, goods, supplies and materials valued in excess of \$50,000, directly from points located outside the State of New York, and earned gross revenues in excess of \$500,000.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. International Union of Operating Engineers, Local 30, AFL-CIO, herein called the Petitioner or the Union, seeks to represent a unit of all full-time and regular part-time technicians and lead parts salesmen at the Brooklyn Service Center on Glenwood Road, but excluding all other employees, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.<sup>2</sup>

### **Positions of the Parties**

The Employer takes the position that the petitioned-for unit is inappropriate, and that the smallest appropriate unit encompassing the petitioned-for unit would have to encompass all technicians, parts sales associates and customer service representatives employed at the Employer's facilities located in Brooklyn, Queens, the Bronx, Valley

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<sup>2</sup> The Petitioner indicated that it would be willing to proceed to an election in an alternative unit found appropriate by the Board.

Stream, White Plains, Riverhead, and Hicksville, New York, and Waterbury, Brookfield, West Haven and Newington, Connecticut, comprising the Employer's Manhattan and Long Island districts.

### **Witnesses**

The Employer's witnesses were Shelvey Washington, the District Service General Manager for the Manhattan and Long Island districts, Kevin Norris, a technical manager in the Manhattan district, and Bret Hughes, the human resources manager for the Manhattan and Long Island districts.

The Union's witnesses were Arobert Stapleton, a refrigeration and heating technician in Brooklyn, Daryl Kershaw, the lead parts associate in Brooklyn, Richard Thompson, a technical supervisor at the Brooklyn Service Center who retired in 1997, and Marc Aisen, an organizer for the Petitioner.

## **FACTS**

### **OVERVIEW OF OPERATIONS**

The Employer is engaged in the sale of general merchandise throughout the United States. As an adjunct to that overall operation, it repairs and sells parts for home appliances, yard and garden equipment. This portion of the overall enterprise is handled by a separate division, Sears Product Services, which is divided into regions, districts and branches. The Brooklyn branch at issue in this case, together with four other facilities, comprise the Manhattan district. The Manhattan district, in turn, together with the Long Island, Boston South, and a number of other districts, are part of a larger region headquartered in Columbia, Maryland. The Manhattan and Long Island districts are in

the process of being consolidated. The Employer's nationwide headquarters are in Chicago, Illinois.

The primary functions of the branch locations are to sell parts for appliances and equipment, and to arrange for the repair of small appliances. Each branch location employs parts sales associates, who are supervised by branch managers.

Larger appliances are repaired in customers' homes by the technicians, who are not assigned to the individual branches. Although their routes generally fall within pre-defined geographical areas, the technicians are administratively grouped according to industry within each district, and are supervised by district-wide technical managers. However, a number of technical managers are in charge of smaller geographical subdivisions within each district. For example, within the Long Island district, the technicians in Connecticut and Long Island are separately supervised.

Customer service and human resources functions are also handled on a district-wide basis. The customer service representatives ("CSRs") in the Manhattan and Long Island districts work in the district headquarters in Queens and Hauppauge, New York, respectively.

The routing of technicians in the Manhattan district is handled at the regional level, in Columbia, Maryland. In addition, there are six nationwide calling centers, whose locations were not disclosed. The six calling centers receive customer calls over an 800 number, refer requests for service to the regional routing centers, resolve complaints, and refer some complaints to the customer service representatives in the

district headquarters. Another 800 line, staffed by Sears employees in Texas,<sup>3</sup> handles technicians' requests for parts.

The Employer's home office in Chicago establishes uniform, nationwide benefits and personnel policies, and sets wage rates for employees throughout the United States.

The record reflects that there are approximately 150 service technicians in the Manhattan district, and another 150 technicians in the Long Island district. Within the two districts, each facility employs between three and six parts sales employees, for a total of 21 in the Manhattan District and 38 in the Long Island district. The number of customer service representatives in the Manhattan and Long Island districts could not be determined on this record.

#### **SCOPE OF MANHATTAN DISTRICT**

Washington testified that the Manhattan District, headquartered in Queens, New York (College Point), encompasses Manhattan, Brooklyn, Queens, the Bronx, the western half of Nassau County, and all of Westchester County. Branch facilities in the Manhattan district are located in Brooklyn, the Bronx, Valley Stream and White Plains, New York. Washington testified that the College Point headquarters includes a sales floor, cubicles for customer service representatives, and an area where parts are shipped in and out. Although all the branches provide the same functions, there are some differences among the facilities. For example, the White Plains branch is embedded in a "regional store," and the Valley Stream branch is a free-standing store.

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<sup>3</sup> The exact location in Texas was not disclosed.

## **SCOPE OF LONG ISLAND DISTRICT**

The Long Island District, headquartered in Hauppauge, New York, includes the eastern part of Nassau County, all of Suffolk County,<sup>4</sup> and the state of Connecticut.

Branch facilities in the Long Island District are located in Riverhead, New York, Hicksville, New York, and Waterbury, Waterford, Brookfield, West Haven and Newington, Connecticut.

Washington testified that that the Hauppauge facility includes a parts sales floor, cubicles for the customer service representatives, work stations for technical managers, a training facility and a break room. The Hicksville branch is attached to a “carry-in facility” where shop repairs take place for the entire New York metropolitan area. The West Haven branch shares a building with the “SLS facility,” where appliances and equipment ordered by customers are delivered, and an outlet appliance center, which sells “white goods” such as refrigerators, washers and dryers. The Waterbury, Connecticut branch is located two miles from a retail store. Washington has not visited the Brookfield or Riverhead branches.

## **CONSOLIDATION OF MANHATTAN AND LONG ISLAND DISTRICTS**

Washington testified that the Manhattan and Long Island districts are in the process of being combined into the Consolidated New York District, headquartered in Hauppauge, New York, and that the consolidation will be completed in mid-January, 2005. The combined district will include all branches currently in the Manhattan and

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<sup>4</sup> Washington’s exact words were “all of Long Island.” However, Long Island includes both Suffolk and Nassau counties, and Washington testified that part of Nassau county is in the Manhattan district.

Long Island districts, other than the Waterford, CT, branch, which will become part of the Boston South District.

At the time of the hearing, both the Manhattan and Long Island districts handled their own separate human resources, customer support and management functions, at the district headquarters in College Point and Hauppauge, respectively. When the two districts are consolidated, the top management of the combined district will operate out of the Hauppauge office. Customer services and human resources functions, other than the interviewing of job candidates, will also be consolidated in Hauppauge. Customer service relations specialists currently working in College Point will either be transferred to Hauppauge or separated from their employment.

When the two districts are consolidated, the parts sales associates will continue to report to their branch managers. Although the technical managers will all report to a district technical manager, who had not yet been hired at the time of the hearing, the technicians in the petitioned-for unit will continue to report to the same technical managers as before. There is no record evidence indicating that the daily routines of the technicians will change after the consolidation.

#### **DISTANCES AMONG FACILITIES**

Washington estimated that the Manhattan District headquarters in College Point is 15 to 25 miles from the Valley Stream facility, 15 to 25 miles from the Bronx facility, 15 to 30 miles from the Brooklyn facility, and 30 miles from the White Plains facility. He estimated that the distance from the Brooklyn location to the Waterbury, Connecticut, location, is 60 to 80 miles. Although he claimed to have driven from the Employer's Brooklyn branch to the Waterbury branch, he did not indicate how long the trip took.

There is no record evidence regarding the distances from the Brooklyn branch to facilities other than College Point, New York, and Waterbury, Connecticut.

## **JOB DESCRIPTIONS**

### **Service Technicians**

The service technicians repair consumer products in customers' homes. Each day, they perform service calls on an assigned route. Each technician specializes in a particular industry or industries. These include HVAC systems (heating, ventilation and air conditioning), refrigeration, laundry appliances, dishwashers, cooking appliances, lawn and garden, and home electronics/television. In addition, A & E technicians repair products purchased at stores other than Sears. The record reflects that 95% to 99% of the technicians' service calls are one-man calls. The remaining 1% to 5% are two-man calls, and there is no evidence that the technicians with routes in Brooklyn have ever performed two-man calls with technicians whose regular routes are not in Brooklyn.

The Employer provides each technician with a truck, a cell phone and a hand-held terminal (referred to interchangeably as an "HHT" or "SST"). The technicians use the cell phones to contact customer service about once a week, and to contact their technical managers. They use the hand-held terminals to sign in and out, to obtain their routes, and to input information on whether the repairs on their routes were completed, the times of arrival and departure from customers' homes, and the amount of cash received from the customers. This information can be accessed by the technical managers, who supervise the technicians, in the form of "recap reports" created by the computer software. The record does not reveal whether the technicians have e-mail addresses, or whether they



have ever used their cell phones or hand-held terminals to communicate with other technicians.

When technicians order parts, they either enter the order on their hand-held computers or telephone an 800 number to access a “dedicated phone hotline” known as “STACK,” which is staffed by employees at a Sears facility in Texas. According to Stapleton, the parts he orders are either delivered to the customer or to the Employer’s Brooklyn location, where Stapleton parks his truck. Alternatively, according to technical manager Norris, the company “rent[s] spaces throughout the district, where techs pick up their parts.” Technicians who park their trucks at home can have parts delivered to their homes.

According to Washington, the technicians also sell water filters, preventative maintenance checks, and maintenance agreements, which provide consumer insurance on items purchased. They receive a 6% commission on the maintenance agreements. The record does not disclose what proportion of technicians’ time is spent selling.

### **Parts Sales Associates**

Washington testified that the parts sales associates sell parts and maintenance agreements. In addition, they issue claim checks to customers for repairs to small consumer appliances, such as vacuum cleaners and televisions below 27 inches. These appliances are then shipped to a “remote location” for repair. The associates at each branch facility receive parts and other merchandise at the dock area, stock shelves, and help with inventory control.

Both Washington and Stapleton testified that the only interaction between the parts sales associates and technicians consists of casual, social conversations.

### **Lead Parts Sales Associates**

Washington testified that the lead parts sales associates are working leads. They perform “all the sales floor functions, back room area, filling the bins, checking in customer product, selling of MAs” (maintenance agreements). The leads act as “model sales associates,” helping other associates to work on their sales skills and generate revenue. On “super Saturdays” and other sales events, the lead parts associate is the “person out front and the model sales associate to help push all that.” In addition, the lead parts sales associates help with inventory control. Not all branches have leads.

Kershaw, the lead parts associate at the Brooklyn branch, maintained that when technicians come to the Brooklyn facility to pick up parts, “there’s like a designated spot that you normally go to, or, if they’re not sure of something, they may ask me.” Although Kershaw “deal[s] with most of the Brooklyn guys,” he did not disclose the frequency of these interactions. Stapleton testified that he did not know the identity of the lead parts associate at the Brooklyn facility.

### **Customer Service Representatives**

According to Washington, the district-level customer service representatives (“CSRs”) are equipped with computers and telephones. They call customers to verify receipt of parts, call the “regional stores,” and follow up on customer inquiries coming from the “national power center.” Washington stated that inbound calls to the CSRs are “coming in to us from the retail stores, coming in from the customers who have our direct local number,” as well as from the “customer care unit” and “from the various branches.” In addition, the CSRs handle “customer inquiries coming from our national consumer line.” Washington did not discuss the nature or purpose of the communications between

the customer service representatives and the regional stores, the national power center, the retail stores, the customer care unit, the national consumer line, and the various branches.<sup>5</sup>

Washington further testified that when a customer has a complaint, he calls an 800 number, which connects the customer with one of the Employer's six nationwide call centers. If the call centers cannot resolve the complaint, they then contact a CSR in the district where the customer resides. If the complaint is a simple one, such as a technician running late, the CSRs "look at it, send a message to routing, send a message to the tech." If the CSR is unable to resolve the customer complaint, the CSR fills out a customer resolution form. Customer complaints involving financial issues, such as requests for refunds, are handled by the district-level operations manager, also known as the support manager. If the customer complaint involves a technician, the customer resolution form is given to the technical manager who supervises the technician responsible for the problem.

Washington asserted that the CSRs and service technicians communicate by computer and cell phone. For example, if a technician needs customer information, he contacts either customer service or routing. The customer service representatives have access to a national customer database, the NPS system, which has detailed customer history information. A technician would also contact a CSR if a consumer refuses to pay, or if there is a problem with billing. A technician might also speak to a CSR when he "call[s] the office to try to find a tech manager."

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<sup>5</sup> Further, the record does not reveal the location and functions of the national power center, the customer care unit, the regional stores, and the national consumer line.

Norris estimated that a more seasoned technician would speak to a customer service representative about once a week, and that newer service technicians would speak to customer service representatives “more frequently.”

## **JOB QUALIFICATIONS**

### **Technicians**

Washington stated that Sears requires all employees to pass a psychological test, a drug test and a background check.<sup>6</sup> In addition, the technicians are required to pass a written test on basic electricity, and to have high school diplomas. The HVAC technicians are also required to have state certifications and licenses for the safe disposal of freon and “dust.” Norris testified that when they are interviewed for the job, technicians are asked whether they are familiar with the geographical area where their routes will be. The Employer’s official job description for technicians indicates that experience “repairing equipment in area of expertise” is “desired.”

### **Customer Service Representatives and Parts Sales Associates**

The official job descriptions for both sales associates and CSRs indicate that no previous experience is required, but that prior data entry experience and a high school diploma or GED are preferred.

## **TRAINING**

### **Technicians**

According to Washington, the Employer provides new technicians with three to six weeks of training on “the various Sears processes.” The duration of the training depends on the skill set of the technician. In addition, for a period of at least three weeks,

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<sup>6</sup> The Employer’s official job descriptions indicate that the psychological test is required for the technicians, but not for the sales associates or support specialists. According to Washington, the official job descriptions are incorrect in this regard.

the new technician accompanies a “mentor tech/lead tech” on his route, and works with the more senior technician during the “period of transition into Sears.” A new technician whose regular route will be in Brooklyn would normally accompany a mentor with a Brooklyn route, according to technical manager Norris. Stapleton, who has mentored a number of new technicians, confirmed that every new technician he has trained was assigned a route in Brooklyn.

In addition, technicians are provided with ongoing training. This includes factory training meetings on new products, conducted by the manufacturers. Stapleton recalled that in the past year or two, he has attended three or four training sessions on new appliances, all of which were held in College Point. Among them was a class on refrigeration, which included technicians he did not recognize, whose routes are not in Brooklyn.

Washington testified that there are training rooms in Hauppauge, for technicians in the Long Island district. The record does not reflect whether Brooklyn technicians will travel to Hauppauge for their training in the future.

#### **Customer Service Representatives and Parts Sales Associates**

There is no record evidence that the customer service representatives and parts sales associates are given training of any kind.

#### **WORK LOCATIONS**

##### **Customer Service Representatives**

At the time of the hearing, CSRs in the Manhattan and Long Island districts worked at the district headquarters in College Point and Hauppauge, respectively. After the two districts are consolidated, they will all work at the Hauppauge location.

### **Parts Sales Associates**

The parts sales associates work at each headquarters and branch facility in the Manhattan and Long Island districts. They do not leave their facility or travel to customers' homes.

### **Technicians**

#### **Seed Points**

Washington and Norris testified that a technician's daily route is based on his "seed point," which is determined based on where the technician lives<sup>7</sup> and the geographical distribution of calls within the technician's industry group. Each technician has both a permanent and a temporary seed point. According to Norris, a technician's permanent seed point corresponds to the spot where he parks his truck on a regular basis.

It is not clear from the record how often the temporary seed point is adjusted. Norris testified that a technician's seed point "might" be adjusted if the volume of calls is lower than normal in his geographical area. By contrast, Washington maintained that temporary seed points can be adjusted daily, according to daily variations in the location and concentration of calls, and that this "daily seed point movement" is controlled by the regional routing center in Maryland.

There is no record evidence that technicians with seed points in Brooklyn have ever performed service calls outside of Brooklyn, or that their seed points have ever been moved to other boroughs. When asked whether it would be likely for a refrigeration

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<sup>7</sup> The Employer emphasizes that a few technicians in New York City have seed points in boroughs other than where they live. For example, one technician who lives in Brooklyn has a seed point in Queens. However, in community of interest determinations, the relevant factor is where employees work, not where they live.

technician in Brooklyn to be dispatched to a service call in Connecticut, Washington conceded that it “would not be business wise to do that.” He stated that in the laundry industry, there is a high volume of service calls, and technicians in that industry do not have to travel very far. However, Washington speculated that in the future, technicians with permanent seed points in White Plains might be asked to help with service calls in the Bronx. Moreover, in the television industry, according to Washington, technicians have a low volume of service calls and could theoretically have to travel up to 200 miles. However, there is no evidence that this has ever occurred in the Manhattan or Long Island districts. The record does not reflect whether any of the television technicians have permanent seed points in Brooklyn.

**Parking of Trucks at the Brooklyn Branch**

The record reflects that some technicians park their trucks at their homes, and some park their trucks at a branch location. For example, Stapleton testified that he parks his truck at the Brooklyn facility. At the beginning of the working day, when he picks up his truck, he records his time into his hand-held terminal, checks his route, and spends 5 to 10 minutes at the Brooklyn branch before making his first call. At the end of the day, similarly, he returns his truck to the Brooklyn branch, signs out on his hand-held terminal, and remains at the branch for a very brief time period. When he reports in at 8:00 a.m., he sees about 50 other Sears vans parked at the Brooklyn branch, and encounters 40 or 45 other technicians picking up their vans. Within Stapleton’s specialty of refrigeration, heating and air conditioning, there are about 30 technicians who park their trucks at the Brooklyn branch, and five who park their trucks at their homes in Brooklyn. All of these individuals report to technical manager Carol Curran.

Similarly, organizer Marc Aisen testified that when he visits the Employer's Brooklyn facility at the end of the working day, he sees 30 to 40 technicians dropping off their trucks and socially congregating before going home.

Norris estimated that of the 26 or 27 technicians who report to him, about six or seven park their trucks at the Brooklyn branch, another three reside in Brooklyn and park their trucks at home, and the remainder have seed points outside Brooklyn. Washington did not know how many technicians have seed points in Brooklyn, and he was not asked how many technicians park their trucks at the Brooklyn branch. Among technicians in the Manhattan district as a whole, Washington believed that 40 to 45% park their trucks at a branch location, and 50-55% park their trucks at home.

#### **Return of Parts to the Brooklyn Facility**

Stapleton testified that he goes to the Brooklyn branch to return parts when too many parts are shipped to a customer, or when a customer declines a service call. When this occurs, about once or twice a month, Stapleton tags the returned parts and puts them "in a corner," as instructed by his technical manager. Kershaw stated that the receiver, sometimes with the help of the parts sales associates, takes care of the parts dropped off by the technicians, but there is no record evidence of any interaction between these employees and the technicians.

#### **Parts Inventory**

Stapleton testified that within the past year, he went to the College Point facility to do inventory on parts. This involved meeting with an individual Stapleton could not identify, who reviewed the contents of his truck to ensure that the truck contained the necessary parts, and to eliminate parts that were not necessary. No other technicians



were there that day. Washington may have been referring to this procedure when he testified that technicians in the Manhattan district go to College Point to “do the truck stock.”

### **Routing of Technicians**

Washington testified that the routing of technicians is done on a regional level, by routing employees in Columbia, Maryland. The Employer uses a routing system known as CARS, which is used to transfer information regarding needed repairs from the call centers, accessed by customers through an 800 number, to the regional routing centers. The CARS system assigns customer calls to technicians based on a technician’s specialty, seed point, and availability. The system determines availability based on scheduling information, such as vacation schedules, provided by the technical managers to the regional routing center. The scheduling information is input into the system by employees at the “regional routing center” in Columbia, Maryland.

Washington testified that there is minimal contact between the call centers and the service technicians, but that there is frequent communication between the service technicians and the regional routing manager and staff, by means of the SSTs. However, the Employer does not propose to include the regional routing staff in the bargaining unit.

### **TEMPORARY INTERCHANGE**

The record reflects that the Employer has a nationwide “light duty policy” whereby technicians injured on the job are temporarily transferred to other positions, including the disputed job classifications of customer service representative and parts sales associate. Norris identified seven technicians in the Manhattan district who have been given temporary transfers under this policy during the past year, without disclosing

whether any of the seven have seed points in Brooklyn. However, Stapleton testified that he has never heard of light duty, and that he was not offered light duty when he was injured between 1997 and 1998.

The Employer did not provide any documentation regarding light duty transfers. There is no record evidence that the technicians, CSRs and parts sales associates have filled in for one another for any other reason.

### **PERMANENT INTERCHANGE**

Norris testified that three technicians in the Manhattan district are former parts sales associates who took advantage of a training program offered by the Employer. One of these individuals, Todd Lessey, now has a seed point in Brooklyn, and was previously a parts sales associate in Brooklyn, according to Norris. Norris did not disclose how long ago Lessey was transferred. However, according to Kershaw, Lessey was hired four or five years ago, and became a technician after performing construction work for six months without ever being a parts sales associate in Brooklyn.

The other two permanent transfers testified to by Norris involved technicians who do not have seed points in Brooklyn. One of these transfers occurred within the past year, and one within the past 18 months.

The Employer did not provide any documentation regarding permanent transfers. Washington testified that since he came to the Manhattan and Long Island districts, no technicians have been “cross-trained” to be CSRs or parts sales associates.

### **SUPERVISION**

#### **Customer Service Representatives**

Washington testified that the CSRs are supervised by Larry Zucherro, the operations manager, who is also referred to as the “support manager.” He is responsible for setting the CSRs’ schedules, granting time off, and overseeing their work. Since September 15, 2004, Zuccherro has been the operations manager for both the Manhattan and Long Island districts.

### **Parts Sales Associates**

Washington testified that the branch managers supervise the parts sales associates assigned to their individual branch locations. The branch managers, in turn, report to the district-wide support manager. The responsibility for disciplining the parts sales associates (if necessary), and signing off on their performance appraisals, is shared by the branch managers, support manager and district human resources manager.

### **Service Technicians**

The record reflects that the service technicians in the Manhattan and Long Island districts are supervised by technical managers, on a district-wide basis according to industry. The ratio of technical managers to technicians is 27 to 1.

Washington stated that in the Long Island District, “The technical managers located in Connecticut works [sic] out of Connecticut and the ones who are in Long Island comes [sic] into the Hauppauge office.” In the Manhattan district, the technical managers have offices at both the College Point and Brooklyn facilities, where they go to meet with technicians and use the computers. Washington acknowledged that the technicians with Brooklyn seed points, regardless of whether they park their trucks at home or at the Brooklyn facility, go to the Brooklyn facility to discuss their work with their technical managers. In addition, they go to the Brooklyn facility twice a month to

attend “ready meetings,”<sup>8</sup> where the technical managers discuss procedural and performance issues.

The functions performed by the technical managers include setting the technicians’ schedules and granting time off. In conjunction with the district-wide human resources managers, the technical managers also impose discipline and write the technicians’ performance appraisals. In addition, the technical managers monitor the “recap reports” containing the technicians’ computerized repair status information. Customer complaints involving a particular technician are used by the technical managers “as a coaching opportunity or to retrieve information from the technician” to resolve the problem.

A chart submitted by the Employer indicates that currently, there are six technical managers in the Manhattan District, and seven technical managers in the Long Island District:

<b>Manhattan District Technical Managers</b>	<b>Industry</b>
Doug Desio	Refrigeration/TV
Kevin Norris	Home Appliances (“HA”)/Laundry
Royley MacIntosh	HA/Laundry
Yuan Williams	HA/Cooking

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<sup>8</sup> Despite record testimony regarding certain district-wide meetings, such as safety committee meetings and a work session on routing issues, there is no evidence that any of the Brooklyn technicians attended these meetings.

Carol Curran	Refrigeration <sup>9</sup>
Carlo Pace	A&E
<b>Long Island District Technical Managers</b>	<b>Industry</b>
Tim Thompson	A&E
Rob Manneseri	Refrigeration/HVAC
Frank Mazzaro	HA/Cooking/Lawn & Garden (“LG”)
Tom Wolfe	HA/Laundry
Holly Welton	HA/Cooking/LG
Dan Kilip	LG
Lynne Trask	Refrigeration/HVAC

After the Manhattan and Long Island districts are consolidated, the only change to this reporting structure will be that the 13 technical managers will be reporting to the district technical manager, who had not yet been hired as of the time of the hearing. Currently, the technical managers are reporting to the district general service manager (Washington).

### **CENTRALIZED LABOR RELATIONS**

The record reflects that the Employer’s wage rates and benefits are determined by the company’s home office in Chicago. The Chicago office sets national, company-wide policies regarding attendance, progressive discipline, light duty transfers, and other personnel matters. The district level human resources managers effectuate these policies,

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<sup>9</sup>According to Stapleton, Curran supervises about 30 refrigeration, heating and air conditioning technicians who park their trucks at the Brooklyn branch, and five who park their trucks at their homes in Brooklyn. Norris testified that Curran also supervises some lawn and garden technicians, and a few A & E technicians. The record does not disclose whether Curran supervises any technicians with seed points outside Brooklyn.

perform the initial screening of job candidates, and sign off on performance appraisals and disciplinary actions. Within the Manhattan and Long Island districts, performance appraisals, hiring and termination decisions, layoffs, and serious disciplinary actions are subject to the district service general manager's final approval.

### **WAGE RATES**

Wage rates for the Employer's College Point facility are set forth in Employer's Exhibit 5, which is "Page 66 of 599" of a document that was not identified. There is a dispute between the parties as to whether the wage rates for the College Point and Brooklyn facilities are the same.

Washington testified that an entry-level technician starts at \$14 per hour, at a grade of "T06," with the potential to earn up to \$23 per hour. The "T07" job grade, with wage rates ranging \$16.10 to \$26.40, encompasses HVAC and lead technicians. Further, he stated that the customer service representatives are in grade A04, earning \$8.80 through \$14.60 per hour, and that lead customer service representatives are in grade A06, with wage rates of \$11.80 through \$20.10 per hour.

According to Washington, a grade of "S05" denotes lead front sales associate, with a range of \$10.20 to \$16.80 per hour. He did not testify regarding the wage rates earned by sales associates other than leads.

### **UNIFORMS**

Hughes testified that the technicians wear uniforms consisting of blue pants and a blue striped shirt. The parts sales associates wear "sales uniforms," consisting of tan pants and a blue shirt. The customer service representatives do not wear uniforms.

## **BENEFITS**

Washington testified that all Sears employees are entitled to participate in the same benefits programs, although there is a distinction between the benefits available to full-time employees and those available to part-time employees. A one-page document entitled, "Sears Benefits at a Glance," indicates that most Sears benefits are for full-time and salaried employees only. This includes insurance benefits such as medical, dental, long-term disability and life insurance, as well as flexible days off, tuition reimbursement and flexible unreimbursed health care spending accounts. Both full-time and part-time employees are eligible to participate in the Employer's 401(K) and associate stock purchase plans, and can receive education loans and discounts on Sears products. Full-time employees are given six paid holidays, and part-time employees are given two. All employees receive paid vacations.

Washington testified that the Sears benefits programs are communicated to employees by the district-level human resources manager, working with the technical managers and branch managers.

## **WORK SCHEDULES**

### **Technicians**

The record reflects that the technicians work five days per week, with coverage six days per week, from Monday through Saturday. All technicians work the same shift, from 8:00 a.m. until 4:30 p.m. During the summer, according to Washington, the shifts are determined by "business need."

### **Part Sales Associates**

Norris testified that most parts sales associates are part-time employees. He did not provide further information regarding their schedules. The record reflects that Kershaw, the lead sales parts associate at the Brooklyn facility, works full-time.

### **CSRs**

According to Washington, there are both full-time and part-time customer service representatives. The customer support function is covered from 7:00 or 7:30 a.m. until 7:00 p.m., but “varies through the seasons.”

### **BARGAINING HISTORY**

The record reflects that the Employer voluntarily recognized the International Brotherhood of Teamsters, Local 917 (“Local 917”) at the Brooklyn location, sometime prior to 1970. Local 917 continued to represent the Brooklyn technicians until 2000. At that time, Local 917 disclaimed interest, for reasons not reflected in the record.

Petitioner introduced into evidence a collective bargaining agreement between Local 917 and the Employer’s Product Service Center in Brooklyn, effective November 1, 1997, through October 31, 2000. The agreement covered the service technicians, installers, trainees, parts and utility associates, but did not include the customer service representatives.

Norris testified that prior to 2002, during the period when Local 917 represented the Brooklyn employees, the Brooklyn Service Center was a “free-standing central service,” with its own district manager, technical managers, technicians, human resources and routing functions. The Brooklyn and College Point service centers merged in 2002, to form the Manhattan district.



## **EXTENT OF ORGANIZATION**

No other labor organization seeks to represent a bargaining unit other than that sought by Petitioner.

## **DISCUSSION**

Section 9(b) provides that the Board “shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” In deciding whether a petitioned-for unit is appropriate, the Board starts with the premise that “the plain language of [Section 9(b) of] the act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit.” *See Overnite Transportation Co.*, 322 NLRB 723 (1996). Accordingly, it is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enf’d*, 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

The criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, the extent of organization, and previous

bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980). By weighing these various factors, the Board determines whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766.

The same considerations apply to unit determinations involving multi-location employers; additional factors include the geographical relationship among the facilities involved and the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations. *See, e.g., Novato Disposal Services, Inc.*, 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald’s Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961). In determining whether a single-facility bargaining unit is appropriate, the Board places great weight on employee interchange, transfers and contacts. *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *Esco Corporation*, 298 NLRB 837, 840 (1990); *see also St. Luke’s Health System, Inc.*, 340 NLRB No. 139 (2003). Conversely, in the retail chain store context, it is well-settled that an undue emphasis on an employer’s administrative grouping of merchandising outlets tends to

“impede the exercise by employees in retail chain operations of their rights to self-organization guaranteed in Section 7 of the Act.” *Save-On Drugs*, 138 NLRB at 1033 (single-store unit found appropriate). A petitioned-for single-facility unit is presumptively appropriate, and the burden is on the party opposing that unit to present evidence overcoming the presumption. *J & L Plate*, 310 NLRB 429 (1993). To overcome the single-facility presumption, the evidence must establish that multiple facilities have been so effectively merged, or that the facilities are so functionally integrated, as to have lost their separate identities. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

### **Customer Service Employees**

The record fails to establish that the customer service representatives (“CSRs”) share such a strong community of interest with the Brooklyn technicians in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766. Rather, the record reflects that the CSRs and the Brooklyn technicians are separately supervised, and there is only minimal contact between these two groups. According to Norris, a more seasoned technician would only speak to a customer service representative once a week, by cell phone. Other than the testimony regarding the nationwide “light duty policy,” there is no evidence that the CSRs and the Brooklyn technicians regularly fill in for one another, that technicians have transferred into CSR positions, or that CSRs have transferred into technician positions.

When the Manhattan and Long Island districts are consolidated, the CSRs will work exclusively in Hauppauge. For the past several years, there have not been any CSRs working in Brooklyn. Moreover, unlike the technicians, who spend most of their working hours in the field, driving trucks and fixing appliances in customers’ homes, the

customer service representatives remain at their desks throughout the day. Unlike the technicians, the CSRs do not wear uniforms.

Finally, whereas the Employer “prefers” that the CSRs have prior data entry experience and a high school diploma, technicians are required to have a knowledge of electricity, and the ability to repair equipment and drive trucks. In contrast with the CSRs, new technicians undergo substantial additional training. It appears from the record that the differences in qualifications, skills and training are reflected in sharply higher wage rates for the technicians.

Accordingly, I conclude that the Employer’s CSRs need not be included in the same unit as the Brooklyn technicians.

#### **Parts Sales Associates and Lead Parts Sales Associates**

As with the CSRs, the record does not establish that the parts sales employees and the Brooklyn technicians have a community of interest which compels their inclusion in the same bargaining unit. Rather, the record reflects that the parts sales employees and the Brooklyn technicians are separately supervised. The evidence regarding temporary and permanent transfers between these two groups is minimal. Any contact between the parts sales employees at the Brooklyn branch and the Brooklyn technicians primarily consists of casual, social conversations. Although the lead parts sales associate testified that the Brooklyn technicians may ask him questions when they pick up parts at the facility, he did not reveal how often this occurs.

Further, the record reflects that the parts sales employees’ qualifications and training are substantially similar to those of the CSRs. They lack the repair skills and electrical knowledge of the technicians, and the wage differentials between the two

groups appear to reflect that distinction. Unlike the technicians, most of the parts sales employees work part-time, and remain at their branch locations throughout their shifts. They wear different uniforms from those of the technicians. Although the technicians, like the parts sales employees, sell maintenance agreements and other items, this is only a minor part of their job duties, which primarily consist of repairing customers' appliances. By contrast, the parts sales employees are primarily engaged in selling, as well as receiving parts and other merchandise, stocking shelves, and helping with inventory control.

Based on the above considerations, I find that the Brooklyn technicians do not share a sufficient community of interest with the parts sales associates to require their inclusion in the bargaining unit. The lead parts sales associate(s) at the Brooklyn branch, whom the Petitioner seeks to include with the technicians, shares a far greater community of interest with the other parts sales associates. Thus, including the lead parts sales associates, while excluding the other parts sales associates from the unit, would not be appropriate.

### **Technicians at Other Locations**

The record reflects that the Brooklyn technicians were separately represented by another labor organization for more than 30 years, and retain a separate identity. The Employer's other facilities are not geographically close. Although the Brooklyn facility is now part of a larger district, the technicians with seed points in Brooklyn meet with their technical managers at the Brooklyn facility, and attend meetings there. Most of the Brooklyn technicians park their trucks at the Brooklyn branch, where they socially congregate with other Brooklyn technicians. Their regular routes are in Brooklyn.

Despite the testimony regarding temporary seed point movement, there is no evidence that the Brooklyn technicians have ever performed service calls outside of Brooklyn, or that they have ever filled in for technicians with seed points outside of Brooklyn. To the extent that they perform two-man service calls, it is with other Brooklyn technicians. The more experienced Brooklyn technicians have mentoring responsibilities for new Brooklyn technicians.

Apart from formal classroom training sessions, which occur at the beginning of the technicians' careers and a few times a year thereafter, there is no evidence of any contact between the technicians with seed points in Brooklyn and those with seed points elsewhere. There is no evidence that the Brooklyn technicians have e-mail addresses, or that they have access to the names and cell phone numbers of technicians in other locations. There is no evidence that technicians with seed points in Brooklyn have ever transferred to other locations, either permanently or temporarily, or that technicians with seed points outside Brooklyn have ever transferred to Brooklyn.

I am mindful of the considerable district-wide, regional and nationwide consolidation of the Employer's labor relations, customer service, routing, and management functions. Nevertheless, in light of their separate bargaining history, the extensive contacts among the Brooklyn technicians, and the absence of contacts or interchange among the Brooklyn technicians and those with seed points elsewhere, I have concluded that the technicians with seed points in Brooklyn constitute an appropriate unit.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a)(1) of the Act:<sup>10</sup>

All full-time and regular part-time technicians with permanent seed points in Brooklyn, New York, EXCLUDING all other employees, customer service representatives, parts sales associates, technicians with seed points in locations other than Brooklyn, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic

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<sup>10</sup> The cases cited by the Employer, including those involving other locations of Sears, are factually distinguishable.

strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 30, AFL-CIO.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **February 7, 2005**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the



Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.

20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 14, 2005**. The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: January 31, 2005, Brooklyn, New York.

ALVIN P. BLYER /S/

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